MAR 5 1943
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

Nos. 37-38

In the Matter of
CHICAGO AND NORTH WESTERN RAILWAY CO.,
Debtor,

LOUIS SUSMAN, et al., Convertible Bond Owners,
Petitioners,

vs.

MUTUAL SAVINGS BANK GROUP COMMITTEE,
ET AL.,
Respondents.

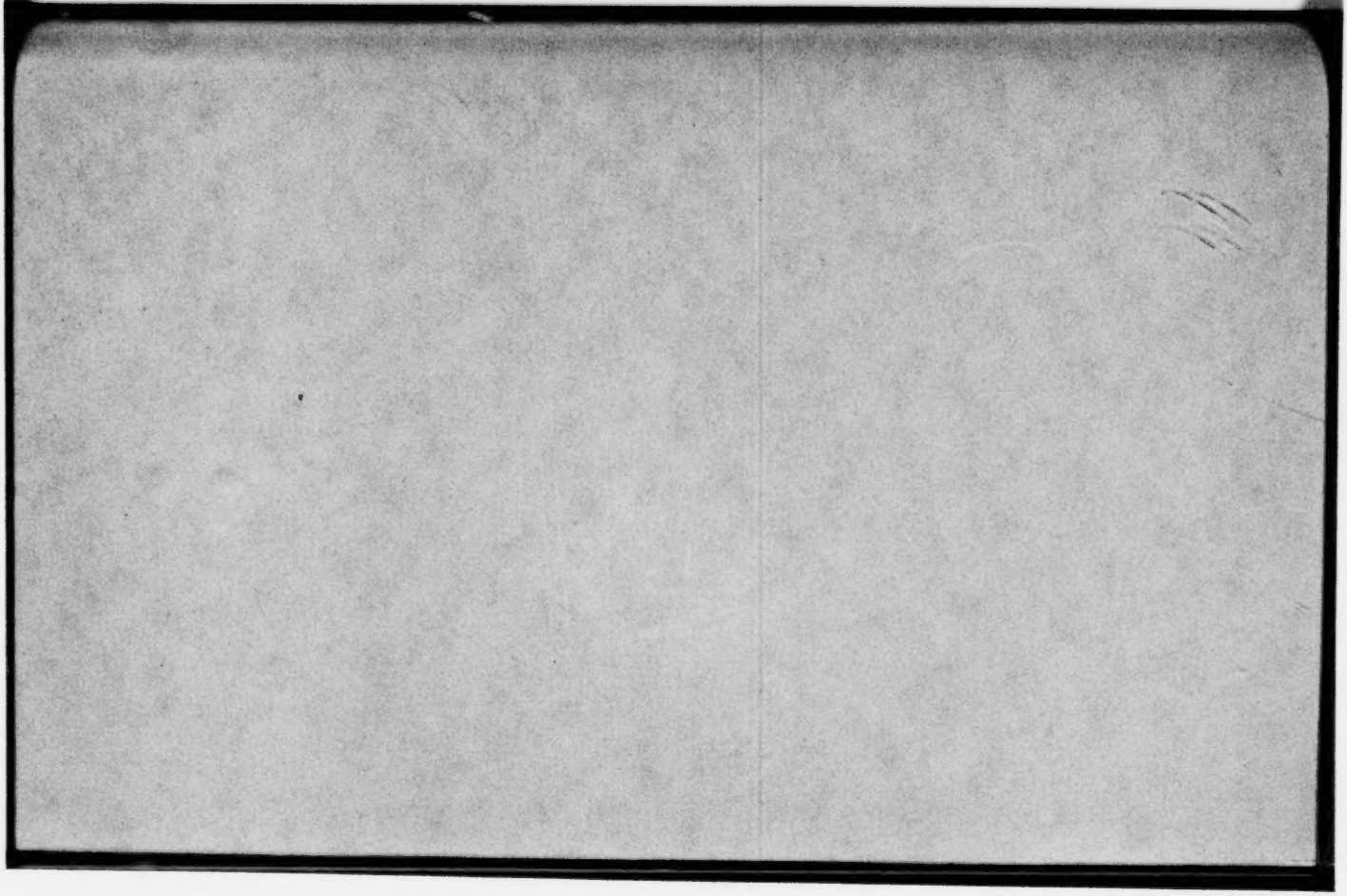
On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

MOTION AND SUGGESTIONS IN SUPPORT OF MOTION.

MEYER ABRAMS,
Counsel for Louis Susman, et al., Convertible Bond Owners, Petitioners.

SHULMAN, SHULMAN & ABRAMS, and
NORMAN ASHER,
134 N. LaSalle Street,
Chicago, Illinois,
Of Counsel.

March 2, 1943.



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Respondents.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

MOTION TO ADOPT THE SUPPLEMENTAL RECORD, AS PRESENTED BY THE DEBTOR IN CASES NOS. 34-35-36, AS PART OF THE RECORD ON PETITIONERS' APPLICATION AND TO BE CONSIDERED IN CONNECTION WITH POINTS II AND III OF THE BRIEF.

Now comes petitioners, Louis Susman, et al., Convertible Bond Owners, and move that the supplement to the record, consisting of the documents mentioned in Debtor's

motions of December 17, 1942 and February 23, 1943 respectively, in Nos. 34-35-36, be adopted and considered as part of the record on petitioners' application for a Writ of Certiorari in connection with Points II and III of Petitioners' Brief, as per suggestions annexed.

MEYER ABRAMS,
Counsel for Louis Susman, et al.,
Convertible Bond Owners,
Petitioners.

SUGGESTIONS IN SUPPORT OF MOTION.

The Debtor filed a motion in cases Nos. 34-35-36, dated December 17, 1942, and a further motion dated February 23, 1943, for leave to supplement the record to indicate the earnings of the Debtor and its cash position up to December 31, 1942. It appears from that supplemental record that the Debtor has sufficient funds to pay the entire indebtedness of the Reconstruction Finance Corporation, amounting to $48,322,687.00, including the principal and interest at 4%, and will still have ample working capital to maintain and operate the property of the Debtor now in control of the Trustee. Appendices A and B to the Debtor's motion of February 23, 1943, show that the items of cash and special deposits aggregated, as of December 31, 1942, $64,439,509.00.

Point II of the brief in support of the petition in the instant case urged upon this Court that the Convertible Bonds were entitled to a lien on the Omaha bonds aggregating $45,186,000.00, which were pledged as security by the Debtor with the Reconstruction Finance Corporation. It was urged that the Debtor wrongfully pledged this security with the Reconstruction Finance Corporation, when such bonds belonged to the Convertible Bond Owners, and that if the pledge be deemed proper, the Convertible Bond Owners should be entitled to any equity, after payment of the debt to the Reconstruction Finance Corporation. Now it appears that there is sufficient money to discharge the whole debt, and the point made by the petitioners in their brief on the right of the Convertible

Bond Owners to be subrogated has much greater force. We ask this Court, therefore, to consider the status of the cash position of the Debtor, as of the present date, in connection with the argument in the petition on the right of subrogation, irrespective of the affirmance of the plan in all other respects. (See our brief, pp. 22-41.)

The supplemental record may be added at this stage of the proceeding, for the reason that this is a bankruptcy case and no rights of third persons have intervened or become vested:

Pfister v. *Northern Illinois Finance Corp.*, 63 S. Ct. 133;

Denholm & McKay Co. v. *Commissioner of Internal Revenue*, 132 Fed. (2nd) 243.

Furthermore, the greatly improved position of the Railroad, both as to assets and also as to income, entitled the Convertible Bonds to full, or certainly to increased participation in the reorganized property. (Point III, pp. 42, 43, Petitioners' Brief.)

Respectfully submitted,

MEYER ABRAMS,
Counsel for Louis Susman, et al.,
Convertible Bond Owners,
Petitioners.

SHULMAN, SHULMAN & ABRAMS, and
NORMAN ASHER,
Of Counsel.

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Respondents.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

MOTION FOR LEAVE TO FILE THE ANNEXED ADDITIONAL BRIEF IN SUPPORT OF THE PETITIONS FOR WRITS OF CERTIORARI.

MEYER ABRAMS,
Counsel for Louis Susman, et al., Convertible Bond Owners, Petitioners.

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April 1, 1943.

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MOTION FOR LEAVE TO FILE THE ANNEXED ADDITIONAL BRIEF.

Now come Louis Susman, *et al.*, holders of Convertible Bonds, Petitioners herein, by Meyer Abrams, their attorney, and move for leave to file instanter the annexed additional brief in support of the petitions for Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

MEYER ABRAMS,
Attorney for Louis Susman, et al.,
Convertible Bond Owners,
Petitioners.